

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms,
Conditions and Rates for Unbundled
Network Elements and Interconnection
(PUC 20) and Resold Services (PUC 21)

September 30, 2004

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we deny the petition of Biddeford Internet Corporation d/b/a Great Works Internet, Cornerstone Communications LLC, Skowhegan Online, and the Office of the Public Advocate (Joint Petitioners) asking us to reconsider Part V of our September 3, 2004 Order in this docket and to issue a "standstill" order requiring Verizon to continue to make line sharing available as an unbundled network element at TELRIC rates, until completion of the line sharing portion of this proceeding.

II. BACKGROUND

Joint Petitioners allege that without the relief requested they will be unable to provide broadband Internet service to new customers by means of line sharing arrangements after October 1, 2004. The Hearing Examiner requested expedited comments on the request by September 23, 2004. Verizon filed comments opposing the request. Mid-Maine Communications, Pine Tree Network, Revolution Networks and Oxford Networks (the "CLEC Coalition") filed comments in support of the petition. The Commission deliberated the request on September 27, 2004.

III. DISCUSSION AND DECISION

In Part V of our September 3, 2004 Order, we found that the FCC had not preempted our further consideration of whether to unbundle line sharing under state law. We stated that we would expeditiously examine this question. The Joint Petitioners urge that because it is unlikely that the Commission can complete such an examination before October 1, 2004 and because Verizon stated it would not offer new line sharing arrangements after October 1, 2004 unless the Joint Petitioners execute an agreement or are ordered to do so by a government agency of competent jurisdiction, it

will be "difficult" for them to offer broadband Internet at reasonable rates. Therefore, they ask the Commission to reconsider the September 3, 2004 Order and direct Verizon to continue providing line sharing at TELRIC rates until the line sharing portion of this proceeding is completed.

We decline to either reconsider our September 3, 2004 Order or to order a standstill. Our authority to issue such a temporary order falls under 35-A M.R.S.A. § 1304(5). It provides:

5. Commission authorized to act on an expedited basis. In proceedings pursuant to section 1302, 1303 or 1321, after reasonable notice and opportunity to be heard, the Commission may issue a temporary order pending the conclusion of the formal public hearing. In making the order, the Commission shall consider the likelihood that it would be issued at the conclusion of the proceeding, the benefit to the public or affected customers compared to the harm to the utility or other customers of issuing the order and the public interest. . . .

As we have previously noted, these statutory criteria are similar to the criteria that the Law Court has required a plaintiff to meet in order to obtain an injunction from the Court. See *Office of the Public Advocate and Raymond Shadis, Petition to Initiate Proceedings*, Docket No. 2002-431, Order Part II (Aug. 6, 2002) quoting the four part standard from *Ingraham v. University of Maine at Orono*, 441 A.2d, 691, 693 (Me. 1982) (plaintiff will suffer irreparable injury if injunction not granted; injury outweighs harm injunction would inflict on the defendant; plaintiff exhibits likelihood of success on the merits; and the public interest will not be adversely affected by granting the injunction).

Applying the criteria in 35-A M.R.S.A. § 1304(5), we cannot find at this time that we are likely to find that Verizon must, under state law, offer line sharing at TELRIC pricing. The purpose of our further examination is to determine the extent of our authority, if any. For example, it is possible we could find that such pricing should be made available only in areas where the current availability of broadband is extremely limited. Also, based on the information before us, it is impossible to determine what harm will come to the Joint Petitioners if a standstill is not ordered. Verizon claims it has offered terms that at least one other CLEC has accepted. Presumably such arrangements could still be negotiated. The Joint Petitioners make no arguments about what harm would result from entering such an arrangement. As further noted by Verizon, most existing customers are unaffected because those being served by line sharing when the TRO became effective are exempt from the transition rules.

Therefore, at this time, we deny the Joint Petitioners' request. The Joint Petitioners can renew their request (with affidavits addressing the criteria in 35-A M.R.S.A. § 1304(5)) if they have additional evidence to support their request.

Dated at Augusta, Maine, this 30th day of September, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.